



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

NOTICE OF MEETING
Government Records Council
April 26, 2022

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 1:30 p.m., Tuesday, April 26, 2022 via Office Teams. Members of the public may attend the meeting by utilizing the following call-in information:

Telephone Number: 1-856-338-7074
Conference ID: 815 013 075

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 1:30 p.m. remotely.

I. Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

II. Executive Director's Report

III. Closed Session

- Edwin Sheppard v. NJ Department of Human Services, Division of Medical Assistance & Health Services (2016-170) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).
- Shirley Brown v. NJ Department of Treasury, Division of Lottery (2018-293) *In Camera* Review (N.J.A.C. 5:105-2.8(g)).

IV. Approval of Minutes of Previous Meetings:

March 29, 2022 Open Session Meeting Minutes

V. New Business – Cases Scheduled for Consent Agenda Administrative Complaint Disposition Adjudication *

An “Administrative Complaint Disposition” means a decision by the Council as to whether to accept or reject the Executive Director’s recommendation of dismissal based on

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jurisdictional, procedural or other defects of the complaint. The Executive Director's recommended reason for the Administrative Disposition is under each complaint below.

A. Administrative Disposition Adjudications with Recusals (Consent Agenda): None

B. Administrative Disposition Adjudications with no Recusals (Consent Agenda):

1. Todd L. Schleifstein v. Randolph Township School District (Morris) (2020-198)
 - Unripe Cause of Action.
2. Marquise McCoy v. NJ State Parole Board (2021-308)
 - No Records Responsive to the Request Exist.
3. Gerlando Termini v. Randolph Township School District (Morris) (2022-31)
 - Not a Valid OPRA Request.
4. Kevin Alexander v. NJ Department of Corrections (2022-32)
 - No Records Responsive to the Request Exist.

C. Administrative Disposition Uncontested, Voluntary Withdrawals by Complainant (No Adjudication of the Council is Required):

1. Josephine Amato-Lewis v. Secaucus Board of Education (Hudson) (2017-242)
 - Complaint Settled in Mediation.
2. Jordan Hansen v. NJ Department of Treasury (2021-180)
 - Complaint Settled in Mediation.
3. David Weiner v. County of Essex (2021-205)
 - Complaint Settled in Mediation.
4. Rahgeam Jenkins v. NJ Department of Law and Public Safety, Division of Criminal Justice (2022-26)
 - Complaint Settled in Mediation.
5. James Lopez v. City of Newark (Essex) (2022-28)
 - Complaint Voluntarily Withdrawn.
6. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2022-35)
 - Complaint Voluntarily Withdrawn.
7. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2022-39)
8. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2022-40) **Consolidated**
 - Complaint Voluntarily Withdrawn.
9. Frank J. Festa, Jr. v. Township of Marlboro (Monmouth) (2022-50)
 - Complaint Voluntarily Withdrawn.
10. Joseph J. Ferdinando v. Borough of Freehold (Monmouth) (2022-58)
 - Complaint Voluntarily Withdrawn.
11. James Sage v. Marlboro Township School District (Monmouth) (2022-111)
 - Complaint Voluntarily Withdrawn.

VI. New Business – Cases Scheduled for Individual Complaint Adjudication

The Executive Director's recommended action is under each complaint below.

A. Individual Complaint Adjudications with Recusals:

1. John R. Lanza, Esq. (o/b/o Wayne Klein) v. Essex County Prosecutor's Office (2020-159) (**SR Recusal**)
 - This complaint must be tabled due to a lack of quorum.
2. Alex Hecht v. NJ Transit (2021-36) (**SR Recusal**)
 - This complaint must be tabled due to a lack of quorum.

B. Individual Complaint Adjudications with no Recusals:

1. Edwin Sheppard v. NJ Department of Human Services, Division of Medical Assistance and Health Services (2016-170)
 - The Custodian complied with the Council's October 30, 2018 Interim Order.
 - The *In Camera* Examination reveals that the Custodian lawfully denied access to the redacted portions of the responsive records. N.J.S.A. 47:1A-1; N.J.S.A. 47:1A-1.1.
 - The Council declines to address the knowing and willful issue because no violation of OPRA occurred.
2. Jessica Bishop v. County of Salem (2018-214)
 - The Council should adopt the Administrative Law Judge's Initial Decision finding that the Complainant abandoned the complaint and same should be dismissed. No further adjudication is required.
3. Shirley A. Brown v. NJ Department of Treasury, Division of Lottery (2018-293)
 - This complaint should be tabled for additional review.
4. Robert C. Scutro v. City of Linden (Union) (2019-180)
 - The Custodian failed to comply with the Council's February 23, 2021 Interim Order.
 - The Council's Order is enforceable in Superior Court. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).
 - The Custodian's actions may have been knowing and willful. Thus, this complaint should be referred to the Office of Administrative Law ("OAL") for a knowing and willful hearing.
5. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. City of Union City (Union) (2020-19)
 - The current Custodian complied with the Council's March 29, 2022 Interim Order.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
6. Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute) v. Borough of Kenilworth (Union) (2020-67)
 - The Custodian complied with the Council's February 22, 2022 Interim Order.

- There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
7. Scott Madlinger v. Berkeley Township (Ocean) (2020-116)
- The Custodian complied with the Council's March 29, 2022 Interim Order.
 - The Custodian did not overcharge the Complainant because she was required to print the entire record. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, the Custodian did not violate OPRA. N.J.S.A. 47:1A-5(b).
8. Andrew Glazer v. NJ Department of Human Services, Office of the Public Guardian for Elderly Adults (2020-140)
- The Custodian complied with the Council's March 29, 2022 Interim Order.
 - The Complainant's request item No. 1 is invalid because it sought "all records" and required research. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012).
 - The Custodian lawfully denied access to OPRA request item No. 2 under N.J.S.A. 52:27G-25(f); N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a).
 - The Custodian lawfully denied access to OPRA request item No. 4 under the personnel records exemption. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 11, 2004).
 - There is no knowing and willful violation.
9. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Glassboro Police Department (Gloucester) (2020-157)
- The Custodian complied with the Council's February 22, 2022 Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.
10. Rotimi Owoh, Esq. (o/b/o Baffi Simmons) v. Hopatcong Police Department (Sussex) (2020-162)
- The Custodian complied with the Council's March 29, 2022 Interim Order.
 - There is no knowing and willful violation.
 - The Complainant is a prevailing party. The parties shall confer on fees and advise the GRC within twenty (20) business days if an agreement is reached. If not, Complainant's Counsel shall submit a fee application in accordance with N.J.A.C. 5:105-2.13.

11. Luis F. Rodriguez v. Kean University (2020-167)
 - The Custodian’s failure to respond to “immediate access” records sought in OPRA request item No. 2 resulted in a violation of OPRA. N.J.S.A. 47:1A-5(e). However, no disclosure is necessary because the Custodian did so on December 16, 2019 and September 17, 2020.
 - The Custodian’s extensions were unwarranted and unsubstantiated; thus, a “deemed” denial of access occurred. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). However, no disclosure is necessary because the Custodian did so on September 17, 2020.
 - There is no knowing and willful violation.

12. Luis F. Rodriguez v. Kean University (2020-168)
 - This complaint should be dismissed because the Complainant did not file it against the agency to whom he submitted the subject OPRA request. N.J.S.A. 47:1A-5(g); Moawad v. City of Bayonne Police Dep’t (Hudson), GRC Complaint No. 2017-162 (November 2017).

13. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-172)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s failure to address the Complainant’s preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014).
 - The Custodian lawfully denied access to the requested employment applications. N.J.S.A. 47:1A-6. See Toscano v. N.J. Dep’t of Human Serv., Div. of Health Serv., GRC Complaint No. 2010-147 (May 2011).
 - The Custodian unlawfully denied access to the responsive resume and must disclose it or certify if none exists. N.J.S.A. 47:1A-9(a); Executive Order No. 26 (Gov. McGreevey, 2002) (“EO 26”).
 - The knowing and willful analysis is deferred.

14. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-173)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s failure to address the Complainant’s preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Delbury, GRC 2013-240.
 - The Complainant’s request was invalid because it failed to seek identifiable government records. MAG, 375 N.J. Super. 534; Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010).
 - There is no knowing and willful violation.

15. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-174)
 - The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

- The Custodian’s failure to address the Complainant’s preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Delbury, GRC 2013-240.
 - The Complainant’s OPRA request was valid because it conformed to the requirements of Elcavage, GRC 2009-07. Thus, the Custodian shall search for and disclose the requested records.
 - The knowing and willful analysis is deferred.
16. Jeffrey Goodwin v. Borough of Woodlynne (Camden) (2020-175)
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian’s failure to address the Complainant’s preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); Delbury, GRC 2013-240.
 - The Custodian lawfully denied access to the requested patrol schedules under the security and surveillance exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (Interim Order dated May 24, 2011).
 - There is no knowing and willful violation.
17. Scott Madlinger v. Berkeley Township Police Department (Ocean) (2020-188)
- The Custodian unlawfully denied access to the redaction on page 1 of the responsive record. N.J.S.A. 47:1A-6. However, no disclosure is necessary because the Custodian did so on October 8, 2020.
 - The Custodian shall refund the Complainant \$0.05, which represented an excessive charge. N.J.S.A. 47:1A-5(b); O’Shea v. Twp. of Vernon (Sussex), GRC Complaint No. 2007-207 (Interim Order dated March 26, 2008).
 - The knowing and willful analysis is deferred.
18. Brian F. McBride v. Township of Washington (Gloucester) (2020-206)
- The Complainant’s complaint is unripe for adjudication and shall be dismissed. Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).
19. Scott Madlinger v. Berkeley Township (Ocean) (2020-214)
- The Custodian’s failure to timely respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
 - The Custodian lawfully denied access to the subject OPRA request because she certified, and the record reflects, that no records exist. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
 - There is no knowing and willful violation.
20. Gerald A. Buccafusco v. Borough of Belmar (Monmouth) (2021-56)
- The Custodian’s response was insufficient because she failed to provide a date certain on which she would respond. Papiez v. Cnty. of Mercer, Office of Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013).
 - The Custodian lawfully denied access to the requested Agreement because it was in draft form and thus exempt under the “inter-agency or intra-agency

advisory, consultative, or deliberative [("ACD")] material" exemption. N.J.S.A. 47:1A-1.1; Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83, 90-91 (App. Div.) (certif. denied, 233 N.J. 484 (2018)).

- There is no knowing and willful violation.

21. Marc Liebeskind v. Borough of Highland Park (Middlesex) (2021-79)

- The GRC must conduct an *in camera* review of the redacted e-mail to determine the validity of the Custodian's assertion that same was lawfully denied based on the ACD exemption. N.J.S.A. 47:1A-1.1; Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
- The knowing and willful analysis is deferred.

22. Diane K. Schubach v. Somerset County Prosecutor's Office (2021-91)

- The Complainant's four (4) OPRA requests are valid because they require a search and not research. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010). Thus, the Custodian shall search for and disclose all press releases responsive to the subject requests or certify if those for a particular year do not exist.
- The knowing and willful analysis is deferred.

VII. Court Decisions of GRC Complaints on Appeal:

VIII. Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

- African Am. Data & Research Inst. "AADARI" v. Plaza, 2022 N.J. Super. Unpub. LEXIS 600 (App. Div. 2022)
- African Am. Data Research Inst. "AADARI" & Obafemi "baffi" Simmons v. Profitt, 2022 N.J. Super. Unpub. LEXIS 622 (App. Div. 2022)

IX. Complaints Adjudicated in U.S. District Court:

X. Public Comment:

The public comment period is limited to providing an opportunity for speakers to present suggestions, views and comments relevant to the Council's functions and responsibilities. In the interest of time, speakers may be limited to **five (5) minutes**. Speakers shall not be permitted to make oral or written testimony regarding pending or scheduled adjudications.*

XI. Adjournment

*Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.